

**House Bill 81**  
**TRS Housekeeping**

Sponsor: Robin Hamilton

STATE ADMINISTRATION

Exhibit No. 2  
Date 3-12-07  
Bill No. HB-81

By request of the Teachers' Retirement Board  
David Senn, Executive Director  
444-3376

**DESCRIPTION**

House Bill 81 is a housekeeping, general revision bill, making administrative changes to the Teachers' Retirement System (TRS) laws. HB 81 was reviewed and approved by the State Administration and Veterans' Affairs Interim Committee.

The changes clarify that paraprofessionals must be members of the System; require retirees elected to the position of County Superintendent to file a written membership election form, and clarifying that members cannot concurrently participate in both the Teachers' Retirement system and the Optional Retirement Program. HB 81 will simplify the divisions of benefits in the case of a divorce; clarify that only active members or inactive vested members may purchase service credit; require that accounts reinstated from dormant status include interest, and provide for the payment of interest on corrected errors. In addition this proposal will clarify the date of termination for the purpose of termination pay elections; clarifying that lump-sum amounts due an estate may be paid to the personal representative or executor, and require employers to use the system's online reporting system for authorizing voluntary insurance premium deductions.

**SECTION-BY-SECTION DESCRIPTION**

**Section 1. §19-20-101, Definitions**

- Change accounting term "fund" to "account" wherever the term is used in the definitions

The terms "annuity saving fund" and "pension accumulation fund" are being replaced with "annuity saving *account*" and "pension accumulation *account*". The Legislative Auditor recommended that the term "*fund*" be changed to "*account*" wherever the term is used throughout the Teachers' Retirement Act.

**Section 2. §19-20-104, Guarantee by state.**

- Change accounting term "fund" to "account" wherever the term is used.

### **Section 3. §19-20-202 Per diem and expenses of the board members.**

- Change accounting term "fund" to "account" wherever the term is used, and other miscellaneous wording upgrades

### **Section 4. §19-20-302, Active membership.**

- Clarify that paraprofessionals who provide instructional support must be members of the Teachers' Retirement System

Paraprofessionals who provide instructional support, as defined by the No Child Left Behind Act, includes those who (1) provide one-on-one tutoring, (2) Assist with classroom management, such as organizing instructional materials, (3) provide instructional assistance in a computer laboratory, (4) conduct parental involvement activities, (5) provide instructional support in a library or media center, (6) act as a translator, or (7) provide instructional support services under the direct supervision of a highly qualified teacher.

- Require retired TRS members elected to the position of county superintendent file a membership election form

Retired TRS members elected to the position of county superintendent may elect to cancel their benefit and become an active contributing member of the System, or to continue to receive their benefit and not earn additional service credit in the TRS. This amendment simply requires they file a form with the System declaring their election.

- Clarify that members cannot concurrently participate in both the Teachers' Retirement System and the Optional Retirement Plan

The legislation establishing the University System Optional Retirement Plan (ORP) in 1987 prohibited members from drawing benefits from the Teachers' Retirement System while participating in the ORP. The TRS has been involved in prolonged litigation with a member who contributed to both the TRS and the ORP, terminated his employment with the school district, applied for benefits, and went to work full-time for the University System where he participated in the ORP.

This case has been before the Montana Supreme Court twice. The first time they found the individual was not eligible to receive TRS benefits until he terminated his position with the University System. The second time, they found the prohibition against his receiving TRS benefits while contributing to the ORP to be constitutional. HB 81 amendments are intended to end the confusion that exists in current law. (Additional amendments are also included in Section 16)

**Section 5. § 19-20-305. Alternate payees – family law orders.**

- Revising the requirements of family law orders to provide for the payment of benefits for the life of the alternate payee

Current law is overly complex and confusing to our members and the attorneys who handle divorces. These amendments will provide for the use of a standard formula for dividing TRS retirement benefits and at the time the TRS member terminates and retires allow for the payment of actuarially adjusted benefits for the life of the non-TRS spouse (alternate payee) as well as our member.

**Section 6. § 19-20-414. Payment methods for purchase of service credit.**

- Clarify that only active or inactive vested members may purchase service credit

Non-vested members who terminate employment covered under TRS lose the right to receive benefits (other than a refund of their account), and are therefore, ineligible to purchase service.

**Section 7. § 19-20-427. Redeposit of contributions previously withdrawn.**

- Change accounting term “fund” to “account” wherever the term is used

**Section 8. §19-20-501. Financial administration of money.**

- Strike language no longer relevant

Subsection (3) includes language that is no longer relevant under SABHRS.

**Section 9. §19-20-503. Transfer of dormant or unclaimed accounts.**

- Change accounting term “fund” to “account” wherever the term is used
- Require accounts reinstated from dormant status include interest

Non-vested accounts that have been dormant for 7 or more years may be transferred by the Board to the pension accumulation account. Before any transfer is made, an exhaustive search for the member is made. This process usually affects accounts with very small balances. However, if the member is ever found, or contacts the TRS, their account is reinstated. The problem is that current law is silent regarding reinstatement of interest. This amendment will require interest be added to each account reinstated. These accounts usually are the result of additional contribution being reported after the member has withdrawn their account and leaving no forwarding address.

**Section 10. §19-20-602. Annuity saving fund – member’s contributions.**

- Change accounting term “fund” to “account” wherever the term is used

**Section 11. §19-20-603. Withdrawal of accumulated contributions – options.**

- Change accounting term “fund” to “account” wherever the term is used

**Section 12. §19-20-605. Pension accumulation fund – employer’s contribution.**

- Change accounting term “fund” to “account” wherever the term is used

**Section 13. §19-20-705. Correction of errors.**

- Provide for the payment of interest on correction of errors

The purpose of this amendment is to codify in statute current administrative rule regarding correction of errors and clarify that interest will be waived if the error was caused by the TRS.

**Section 14. §19-20-716. Termination pay.**

- Clarify the date of termination for the purpose of termination pay elections

TRS members may elect to make tax-deferred contributions on their termination pay provided their election is executed at least 90 days prior to their date of termination. This amendment defines the date of termination as the last day the member is performing any services covered under this chapter.

**Section 15. §19-20-717. Effect of no designation or no surviving beneficiary.**

- Clarify lump sum amounts due an estate may be paid to the personal representative or executor

Amendments will change the word “guardians” to “personal representative or executor”. “Guardians” is an unusual term to use in this context.

**Section 16. §19-20-731. Postretirement employment limitations – cancellation and recalculation of benefits.**

- Clarify working retiree positions eligible to participate in the TRS

Retirees hired under “employee leasing arrangements”, “professional employer arrangements” or through temporary service contractor would be subject to the earning and time limitations allowing retirees to return to work part-time in a position eligible to participate in the TRS and earn up to one third of their average final compensation without loss of their retirement benefits. This change will **NOT** affect independent contractors.

- Clarify that members participating in the Optional Retirement Plan are ineligible to receive TRS retirement benefits, and if they participate in the ORP that benefits will be suspended

This amendment will codify recent the decisions of the Montana Supreme Court, and restate the intent of the legislature when they created the ORP.

**Section 17. §19-20-805. Earned compensation – part-time service.**

- Correction of typo error

The phrase “divided by the member's part-time teachers' retirement system service credit” is repeated in error in the same subsection (2)(a)(ii).

**Section 18. §19-20-1101. Withholding of group insurance premium from retirement allowance.**

- Require employers use the system's online reporting system for authorizing voluntary insurance premium deductions

Retirees participating in their former employer's health insurance plan may elect to have their monthly premiums deducted from their TRS benefit and paid, by TRS, to their employer. This automated service is provided as a convenience to our retirees and totally controlled by their employer. Employers wishing to use this system must use the online reporting system developed for this purpose.

**Section 19. Effective Date.**

- HB 81 will be effective on passage and approval

# House Bill 81

## TRS Housekeeping

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By request of the Teachers' Retirement Board

### **Summary of Substantive Provisions:**

- Clarify that paraprofessionals must be members of the Teachers' Retirement System;
- Clarify working retiree employed by a school district through a "employee leasing arrangement" or "professional employment arrangement" are eligible to participate in the TRS
- Require elected county superintendents file a membership election form if they are retired when elected to the position;
- Clarify that members cannot concurrently participate in both the Teachers' Retirement System and the Optional Retirement Plan;
- Revising the requirements of family law orders to provide for the payment of benefits for the life of the alternate payee;
- Clarify that only active or inactive vested members may purchase service credit;
- Require inactive accounts reinstated from dormant status be reinstated with interest;
- Provide for the payment of interest on correction of errors;
- Clarify the date of termination for the purpose of termination pay elections;
- Clarify lump sum amounts due an estate may be paid to the personal representative or executor;
- Require employers use the system's online reporting system for authorizing voluntary insurance premium deductions;
- Provide for the correct use of accounting terms as recommended by the Legislative Auditor.